

SECOND INVITATION TO BID: FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR BERING SEA / ALEUTIAN ISLANDS KING AND TANNER CRABS

I. Invitation:

The United States of America, acting by and through the Secretary of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Financial Services Division (herein referenced as "NMFS") hereby extends to qualifying bidders this second invitation to bid (herein referenced as the "Second Bid Invitation") in the fishing capacity reduction program (herein referenced as the "Program") for the crab species covered by the fishery management plan for Bering Sea/Aleutian Islands king and tanner crabs.

II. Definitions:

When used in the Second Bid Invitation and in the document entitled "SECOND FISHING CAPACITY REDUCTION PROGRAM BID AND TERMS OF AGREEMENT FOR CAPACITY REDUCTION: BERING SEA AND ALEUTIAN ISLANDS KING AND TANNER CRABS" (herein referenced as the "Second Reduction Contract"), the following terms have the same meaning as in 50 CFR § 600.1018, published on December 12, 2003, at 68 FR 69331-69342 (herein referenced as the "Final Rule"):

- (a) Acceptance,
- (b) Bid,
- (c) Bid amount,
- (d) Bidder,
- (e) Bid crab,
- (f) Bid score,
- (g) Co-bidder,
- (h) Crab,
- (i) Crab license,
- (j) Crab reduction permit,

- (k) Non-crab reduction permit,
- (l) Qualifying bidder,
- (m) Reduction fishing interest,
- (n) Reduction fishing privilege,
- (o) Reduction/history vessel,
- (p) Reduction/privilege vessel,
- (q) Referendum, and
- (r) Replacement vessel.

III. Governing Laws and Regulations:

§ 144 of Pub. Law 106-554, § 2201 of Pub. Law 107-20, and § 205 of Pub. Law 107-117 specifically authorize the Program. 16 U.S.C. §1861a (b)-(e) authorizes fishing capacity reduction programs in general. The Final Rule specifically governs the Program. 50 CFR §600.1000 et seq. are framework regulations governing fishing capacity reduction programs in general.

The Program, the Second Bid Invitation, and the Second Reduction Contract are subject to the laws and regulations this section III cites.

Prospective bidders should read these law and regulations, particularly the Final Rule which governs the Program's specific procedures and requirements.

IV. Bidder:

Each bid must have a qualifying bidder.

If the bid's reduction/history vessel is the same vessel as the bid's reduction/privilege vessel and the qualifying bidder is the owner of record of the reduction/privilege vessel, the qualifying bidder must bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's reduction/privilege vessel but the qualifying bidder is the owner of record of both vessels, the qualifying bidder must also bid alone.

If the bid's reduction/history vessel is not the same vessel as the bid's reduction/privilege vessel and the qualifying bidder is not the reduction/privilege vessel's owner of record, the reduction/privilege vessel's owner of record is the co-bidder and must bid together with the

qualifying bidder.

If the qualifying bidder or a co-bidder is co-owned by different persons or other legal entities, each of the qualifying bidder's co-owners must sign the bid on behalf of the qualifying bidder and each of the co-bidder's co-owners must sign the bid on behalf of the co-bidder.

V. Bidding Period:

Bidding opens on August 6, 2004, and closes on September 24, 2004.

Bidders may not submit bids before bidding opens on August 6, 2004.

Bidders must submit bids sufficiently before bidding closes on September 24, 2004, for NMFS (at the address specified in Second Bid Invitation section VI) to have marked its receipt of the bids no later than 5:00 P.M., Eastern Daylight Time, on September 24, 2004.

In the event of a Washington, DC, area emergency affecting U.S. mail or other deliveries to NMFS, NMFS will, in its sole discretion, make such accommodation of late bids as NMFS deems reasonably appropriate to the emergency's timing and nature and the degree of bid lateness.

VI. Bid Delivery:

Bidders must deliver bids to the following NMFS address:

Michael L. Grable
Chief, Financial Services Division
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
Room 13100
1315 East-West Highway
Silver Spring, MD 20910

Bidders may deliver bids only by: U.S. mail, express or other delivery service, or personal delivery. NMFS assumes no risk of bid non-delivery or late delivery.

Bids delivered to NMFS must contain original bidder signatures.

VII. Bid Completion:

No bid may be made on any form other than the one (herein referenced as the "Bid Form") entitled "Fishing Capacity Reduction Bid Submission Form" which is provided as section 48 of the Second Reduction Contract.

No bidder should complete any Bid Form other than the one in the Second Reduction Contract accompanying this Second Bid Invitation.

Bidders may not alter, revise, or in any other way attempt to change the Second Reduction Contract terms and conditions. The Second Reduction Contract terms and conditions are non-negotiable, and NMFS will reject as non-responsive any bid which attempts to change them.

As otherwise specified in, and exactly in accordance with, the Second Reduction Contract, each bidder must complete the Bid Form by:

- (a) Inserting, in the place provided at section 48.II.(a), the qualifying bidder's name(s) and the co-bidder's name(s) (if the bid requires a co-bidder),
- (b) Inserting, in the place provided at section 48.II.(b), each bidder's address of record,
- (c) Inserting, in the place provided at section 48.II.(c), each bidder's telephone number,
- (d) Inserting, in the place provided at section 48.II.(d), each bidder's electronic mail address (if the bidder has one),
- (e) Inserting, in the place provided at section 48.III, the bid's crab reduction permit number and including a photocopy of the permit,
- (f) Inserting, in the place provided at section 48.IV, the bid's non-crab reduction permit number(s) (if the bid requires a non-crab reduction permit(s)) and the fishery(s) involved and including a photocopy of the permit(s),
- (g) Inserting, in the place provided at section 48.V, the requested fishing history information for the bid's crab reduction permit and non-crab reduction permit(s),
- (h) Inserting, in the place provided at section 48.VI, the official name and official number of the bid's reduction/privilege vessel and including a photocopy of the vessel's certificate of documentation,
- (i) Inserting, in the place provided at section 48.VII, a bid amount, and
- (j) Signing, in the place provided at section 48.VIII, the Second Reduction Contract and having a notary acknowledge and certify each signature.

VIII. Bid Submission And Effect:

After completing the Bid Forms, bidders must submit the full (all 22 pages) Second Reduction Contracts to NMFS. This includes the completed Bid Form together with the remainder of the Second Reduction Contract preceding the Bid Form. Each Bid Form is

subject to the Second Reduction Contract's full terms and conditions.

Delivering a Second Reduction Contract with a completed Bid Form to NMFS constitutes bid submission.

NMFS will deem each bid to have been submitted as of the receipt time and date which NMFS marks on each bid which NMFS receives at the address specified in Bid Invitation section VI.

Each bid submitted to NMFS constitutes the bidder's irrevocable offer to NMFS in accordance with the Second Reduction Contract's terms and conditions. No bidder should initiate delivery of its bid unless the bidder fully intends to make an irrevocable bid to NMFS.

Once each bidder initiates bid delivery, NMFS will neither intercept the bid and return it to the bidder nor comply with the bidder's request either to regard the bidder as not having submitted the bid or to return the bid unsubmitted to the bidder.

NMFS will regard as non-responsive each bid which a Bidder does not complete, submit, and deliver fully in accordance with the Second Bid Invitation and the Second Reduction Contract. Although NMFS has no obligation to do so, NMFS nevertheless may, in its sole discretion, contact any bidder in an attempt to remedy any bid deficiency which NMFS deems reasonably capable of remedy.

Any bidder's submission of a bid containing false information may subject the bidder to the substantial penalties provided in the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. §1801, et seq., and other applicable law.

Once a bidder submits its bid, NMFS shall accept bids following a reverse auction. That acceptance is subject to the condition subsequent of a successful referendum.

Bidders are solely responsible for being aware of and understanding bidding's full legal effect. Before bidding, NMFS strongly suggests that bidders review with their legal advisers the governing law and regulations, the Second Bid Invitation, and the Second Reduction Contract. Bidders' failure to do so does not, however, affect the irrevocable nature of their bids.

IX. After Bid Submission:

After bidding closes, NMFS will, in the manner which the Final Rule provides:

- (a) Score bids;
- (b) Evaluate and accept bids, subject to the condition subsequent of a successful referendum;

(c) Conduct a referendum; and

(d) If the referendum is successful:

(1) Advise bidders of the referendum's results,

(2) Notify each bidder whether NMFS accepted or rejected its bid, and

(3) Complete the Program by:

(i) Publishing a reduction payment tender notice in the Federal Register,

(ii) Tendering reduction payment to accepted bidders,

(iii) Revoking, restricting, withdrawing, invalidating, or extinguishing by other means (as the case may be) each element of the reduction fishing interest,

(iv) Disbursing reduction payments in accordance with accepted bidders' written payment instructions, and

(v) Instituting, for post-reduction fish sellers and fish buyers in the reduction fishery, reduction loan fee payment and collection; or

(e) If the referendum is unsuccessful,

(1) Cease further Program activity, or

(2) Issue a new Bid Invitation and repeat the Program process following an invitation to bid.

Notification of acceptance or rejection constitutes final agency action.

After bidding, bidders must continue to be the owners, holders, or retainers (as the case may be) of record of each element of the reduction fishing interests in their bids unless or until:

(a) If the post-bidding referendum is unsuccessful, NMFS notifies the bidders that the referendum was unsuccessful, in which case no bidder need continue in this capacity;

(b) If the post-bidding referendum is successful, NMFS notifies rejected bidders that NMFS has rejected their bids, in which case no rejected bidder need continue in this capacity but each accepted bidder must continue in this capacity until NMFS revokes, restricts, withdraws, invalidates, or extinguishes by other means each element of the reduction fishing interest; or

(c) The irrevocable bid offers expire before either (a) or (b) occurs, in which case no bidder need continue in this capacity.

When, following a successful referendum, NMFS notifies each accepted bidder of NMFS' previous acceptance of the bidder's irrevocable bid offer, the Second Reduction Contract is then unconditional and all Second Reduction Contract parties must fulfill their Second Reduction Contract obligations.

When NMFS tenders reduction payment to each accepted bidder, all fishing with respect to each element of the accepted bidder's reduction fishing interest must forever cease and each accepted bidder must immediately retrieve all deployed fishing gear, whether or not the accepted bidder owns such gear, which anyone previously deployed from the accepted bidder's reduction/privilege vessel and return such gear to the shore.

Each bid will expire on March 31, 2005, unless NMFS has before such date notified the bidder in writing at the bidder's address of record that NMFS accepted the bidder's bid.